IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4979 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

AR VOHRA

Appearance:

1. Special Civil Application No. 4979 of 1989

MR HARDIK C RAWAL for Petitioner No. 1

MR HM PARIKH for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 16/01/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Hardik Raval for the petitioner and Mr. H.M. Parikh for the respondent workman. By way of this petition under Article 227 of

the Constitution of India, the petitioner corporation has challenged the award dated 6th November, 1988 made by the Labour Court, Nadiad in Reference (LCN) No. 752 of 1983 whereby the labour court has, while setting aside the impugned order of dismissal, granted reinstatement with continuity of service with 25 % back wages for the intervening period. At the time of issuing rule on 22nd January, 1991, this court has not granted any interim relief in favour of the petitioner corporation staying operation and execution of the award made by the labour court.

Two facts are important to dispose of the present petition. One fact is that the award passed by the labour court has been fully implemented and executed by the petitioner corporation by order dated 14th February, 1989 bearing DEO No. 147 of 1989 wherein the respondent workman was reinstated in service with continuity of service, with 25% of the back wages for the intervening period. Learned advocate Mr. Raval has produced said order before this Court which is ordered to be taken on record.

Learned advocate Mr. Parikh appearing for the respondent workman has made a clear statement before this Court that the respondent workman has expired in or about 1998.

In light of these factual aspects which are not in dispute, the award made by the labour court, Nadiad has been examined by this Court. The respondent workman was working as a driver at Petlad Depot, Nadiad. He remained absent from duty from 20th June, 1981 to 13th July, 1981. For his absence for a period of less than one month due to sickness, he was served with a chargesheet and thereafter, ex-parte inquiry was conducted against the workman and ultimately, the respondent workman was dismissed from service.

Before the labour court, by filing the purshis at Exh. 28, the respondent workman has submitted that he is not challenging the legality, validity and propriety of the departmental inquiry as well as the findings recorded by the inquiry officer but has submitted that looking to the gravity of misconduct, the order of punishment imposed by the petitioner corporation is disproportionate. Therefore, in view of the purshis Exh. 28, the labour Court has, while exercising the powers under section 11-A of the Industrial Disputes Act, 1947, examined whether the punishment of dismissal imposed by the petitioner corporation is proportionate looking to

the gravity of misconduct or not. In exercise of the powers under section 11-A of the Industrial Disputes Act, 1947, the labour court found that looking to the gravity of misconduct, past record and long service of the respondent workman, order of dismissal is disproportionate and therefore, in view of such finding, the labour court passed an award of reinstatement with continuity of service and 25 % back wages and denied 75% back wages as penalty for the misconduct committed by the respondent workman. In case of misconduct of remaining absent, as per the decisions of the apex court reported in AIR 1994 SC 215 and 1999 SCC Lab. & Service page 666, the apex court has held that the punishment of dismissal in such cases is disproportionate looking to the gravity of misconduct. Therefore, in view of the facts and circumstances of the case and also in view of the decisions of the apex court, according to my view, the labour court has not committed any error while coming to such conclusion in exercise of the powers under section 11-A of the Industrial Disputes Act, 1947. According to my opinion, the labour court has rightly exercised the powers under section 11-A of the Industrial Disputes Act and has rightly passed the award in favour of the respondent workman and, therefore, no interference is required while exercising the powers under Article 227 of the Constitution of India. Therefore, this petition is dismissed. Rule is discharged. There is no order as to costs.

16.1.2002. (H.K. Rathod,J.)

Vyas